

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Pérez

February 19, 2010

~~An act to amend Section 12209 of the Public Contract Code, and to~~
An act to add Chapter 20 (commencing with Section 42970) to Part 3
of Division 30 of, *and to repeal Section 42980 of*, the Public Resources
Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, John A. Pérez. ~~Product stewardship: carpet:~~
~~public procurement. stewardship: carpet.~~

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

The bill would require, by September 30, 2011, a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department, which would be required to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan, including administrative, operational, and capital costs of the plan.

~~The department bill would require the funding mechanism to provide for a carpet stewardship assessment per unit of carpet sold by a manufacturer, to be paid by each member of the carpet stewardship organization on and after January 1, 2013.~~

The bill would require, until January 1, 2013, the Carpet America Recovery Effort (CARE), a 3rd-party nonprofit stewardship organization established by the Carpet and Rug Institute, to serve as the carpet stewardship organization and would allow, on and after January 1, 2013, a carpet stewardship organization appointed by one or more manufacturers to submit a plan.

The bill would require, as of April 1, 2011, until January 1, 2013, a manufacturer of carpet to add an assessment of \$0.05 per square yard upon the purchase price of all carpet sold in the state by that manufacturer. The bill would require the assessment to be remitted on a quarterly basis, as appropriate, to CARE or would allow the manufacturer to retain that assessment. The bill would require these revenues to be expended by CARE or by an individual manufacturer, prior to approval of its carpet stewardship plan, only to implement early action measures that are consistent to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

The department would be required to, among other things, within 60 days after the department receives a plan, review and determine whether the plan ~~is complete~~ complies with the bill's requirements and notify the submitter of its ~~determination~~ decision. The bill would specify that any plan not ~~determined to be complete~~ approved by March 31, 2012, is out of compliance until determined to be complete by the department.

The bill would ~~prohibit~~ provide that a manufacturer, wholesaler, or retailer, on and after April 1, 2012, ~~from selling a~~ that offers carpet ~~unless the~~ for sale or promotional purposes without an approved plan for that carpet is not in compliance with the act's requirements. The act would also require the carpet stewardship organization to ~~meet specified targets~~ demonstrate to the department that it has achieved continuous meaningful improvement in the recycling rate in order to be in compliance.

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan.

A manufacturer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an annual administrative fee when submitting the plan for review and approval, as determined by the department. The bill would provide for the imposition of administrative civil penalties upon a person who ~~sells carpet in violation of~~ *violates the bill and would provide that the manufacturer or carpet stewardship organization whose plan is not approved by the department by March 31, 2012, is subject to those penalties until the plan is approved. The department would be authorized to expend those fees and penalties, upon appropriation by the Legislature, to administer the bill's provisions.*

~~(2) Existing law provides various procedures and requirements pertaining to the purchase of recycled items by the state, including, among other things, recycled paper products, plastic products, metal products, and paint.~~

~~This bill would additionally provide requirements for the purchase of carpet.~~

The bill would require the department and the Department of General Services to complete a study, by January 1, 2014, that examines the standard for carpet purchases by the state, in the NSF/ANSI 140-2007 Standard, Platinum Level, and to submit the study to the Governor and the Legislature, including recommendations for any appropriate changes to that standard.

(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, as prescribed, and to establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.

This bill would require the Department of Toxic Substances Control to fully consider the measures taken by the carpet industry pursuant to the program established by the bill, and the results of those measures, when considering whether to include carpet in the product registry adopted under those provisions or to otherwise regulate carpet pursuant to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Discarded carpet is one of the 10 most prevalent waste*
4 *materials in California landfills, equaling 3.2 percent of waste by*
5 *volume disposed of in California in 2008. Because carpet is heavy*
6 *and bulky, it imposes a significant solid waste management cost*
7 *on local governments.*

8 *(b) Numerous products can be manufactured from recycled*
9 *carpets, including carpet, carpet underlayment, automobile parts,*
10 *picnic tables, park benches, and erosion control products. Several*
11 *carpet recycling facilities currently operate in California,*
12 *producing products and feedstock for products made from recycled*
13 *carpet.*

14 *(c) The United States carpet industry has established a*
15 *third-party nonprofit organization, the Carpet America Recovery*
16 *Effort, also known as CARE, to increase the recycling and reuse*
17 *of postconsumer carpet and reduce the amount of carpet going to*
18 *landfills.*

19 *(d) CARE represents at least 90 percent of United States carpet*
20 *manufacturers and 95 percent of the volume of carpet sold in the*
21 *United States.*

22 *(e) According to CARE, in 2008, the most recent year for which*
23 *data are available, 5.2 percent of carpet was diverted from landfills*
24 *and 4.3 percent was recycled.*

25 *(f) It is in the interest of the state to establish a program,*
26 *working to the extent feasible with the carpet industry, to increase*
27 *the landfill diversion and recycling of postconsumer carpet*
28 *generated in California.*

29 *SEC. 2. Chapter 20 (commencing with Section 42970) is added*
30 *to Part 3 of Division 30 of the Public Resources Code, to read:*

31
32 *CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS*
33

34 *42970. The purpose of this chapter is to increase the amount*
35 *of postconsumer carpet that is diverted from landfills and recycled*
36 *into secondary products or otherwise managed in a manner that*
37 *is consistent with the state's hierarchy for waste management*
38 *practices pursuant to Section 40051.*

1 42971. For purposes of this chapter, and unless the context
2 otherwise requires, the definitions in this section govern the
3 construction of this chapter:

4 (a) “Brand” means a name, symbol, word, or mark that
5 identifies the carpet, rather than its components, and attributes
6 the carpet to the owner or licensee of the brand as the
7 manufacturer.

8 (b) “CARE” means the Carpet America Recovery Effort, a
9 third-party nonprofit stewardship organization established by the
10 Carpet and Rug Institute to increase the reclamation and
11 stewardship of postconsumer carpet.

12 (c) (1) “Carpet” means a manufactured article that is used in
13 commercial or residential buildings affixed or placed on the floor
14 or building walking surface as a decorative or functional building
15 interior feature and that is primarily constructed of a top visible
16 surface of synthetic face fibers or yarns or tufts attached to a
17 backing system derived from synthetic or natural materials.

18 (2) “Carpet” includes, but is not limited to, a commercial or a
19 residential broadloom carpet or modular carpet tiles.

20 (3) “Carpet” does not include a rug, pad, cushion, or
21 underlayment used in conjunction with, or separately from, a
22 carpet.

23 (d) (1) “Carpet stewardship organization” or “organization”
24 means either of the following:

25 (A) An organization appointed by one or more manufacturers
26 to act as an agent on behalf of the manufacturer to design, submit,
27 and administer a carpet stewardship plan pursuant to this chapter.

28 (B) A carpet manufacturer that complies with this chapter as
29 an individual manufacturer.

30 (2) Notwithstanding paragraph (1), until January 1, 2013, CARE
31 shall be the sole carpet stewardship organization pursuant to
32 subparagraph (A) of paragraph (1).

33 This paragraph does not restrict the option of an individual
34 carpet manufacturer to comply with this chapter as a carpet
35 stewardship organization, on and after January 1, 2011, pursuant
36 to subparagraph (B) of paragraph (1).

37 (e) “Carpet stewardship plan” or “plan” means a plan written
38 by an individual manufacturer or a carpet stewardship
39 organization, on behalf of one or more manufacturers, that includes
40 all of the information required by Section 42972.

1 (f) “Consumer” means a purchaser or owner of carpet,
2 including a person, business, corporation, limited partnership,
3 nonprofit organization, or governmental entity.

4 (g) “Department” means the Department of Resources
5 Recycling and Recovery.

6 (h) “Label” means a graphic representation of three chasing
7 arrows with a carpet roll inside the arrows, or an alternative
8 design, designed by CARE and approved by the department for
9 use on all invoices and contracts pursuant to subparagraph (C)
10 of paragraph (3) of subdivision (c) of Section 42972.

11 (i) “Manufacturer” means, with regard to a carpet that is sold,
12 offered for sale, or distributed in the state any of the following:

13 (1) The person who manufactures the carpet and who sells,
14 offers for sale, or distributes that carpet in the state under that
15 person’s own name or brand.

16 (2) If there is no person who sells, offers for sale, or distributes
17 the carpet in the state under the person’s own name or brand, the
18 manufacturer of the carpet is the owner or licensee of a trademark
19 or brand under which the carpet is sold or distributed in the state,
20 whether or not the trademark is registered.

21 (3) If there is no person who is a manufacturer of the carpet for
22 the purpose of paragraphs (1) and (2), the manufacturer of that
23 carpet is the person who imports the carpet into the state for sale
24 or distribution.

25 (j) “Postconsumer carpet” means carpet that is no longer used
26 for its manufactured purpose.

27 (k) “Program” means the system for the collection,
28 transportation, recycling, and disposal of carpets pursuant to a
29 completed carpet stewardship plan that is financed and managed
30 or provided by an individual manufacturer or collectively by one
31 or more manufacturers.

32 (l) “Recycling” means the process, consistent with Section
33 40180, of converting postconsumer carpet into a useful product
34 that meets the quality standards necessary to be used in the
35 marketplace.

36 (m) “Retailer” means a person who offers new carpet in a retail
37 sale, as defined in Section 6007 of the Revenue and Taxation Code,
38 including a retail sale through any means, including remote
39 offerings such as sales outlets, catalogs, or an Internet Web site
40 or other similar electronic means.

1 (n) “Sell” or “sales” means a transfer of title of a carpet for
2 consideration, including a remote sale conducted through a sales
3 outlet, catalog, Internet Web site or similar electronic means, but
4 does not include a lease.

5 (o) “Wholesaler” means a person who offers new carpet for
6 sale in this state in a sale that is not a retail sale, as defined in
7 Section 6007 of the Revenue and Taxation Code, and in which the
8 carpet is intended to be resold.

9 42972. (a) On or before September 30, 2011, a manufacturer
10 of carpets sold in this state shall, individually or through a carpet
11 stewardship organization, submit a carpet stewardship plan to the
12 department that will do all of the following:

13 (1) Achieve the purposes of this chapter, as described in Section
14 42970, and meet the requirements of Section 42975.

15 (2) Include goals that, to the extent feasible based on available
16 technology and information, increase the recycling of postconsumer
17 carpet by increasing the diversion of postconsumer carpets from
18 landfills, increasing the recyclability of carpets, and incentivizing
19 the market growth of secondary products made from postconsumer
20 carpet. The goals established in the plan shall, at a minimum, be
21 equal to the goals established in a national memorandum of
22 understanding for carpet stewardship, if one exists at the time the
23 plan is submitted to the department.

24 (3) Describe measures that will be taken to manage
25 postconsumer carpet in a manner consistent with the state’s solid
26 waste management hierarchy, including, but not limited to, source
27 reduction, source separation and processing to segregate and
28 recover recyclable materials, and environmentally safe
29 management of materials that cannot feasibly be recycled.

30 (4) Include a funding mechanism, consistent with subdivision
31 (c), that provides sufficient funding to carry out the plan, including
32 the administrative, operational, and capital costs of the plan.

33 (5) Include education and outreach efforts to consumers, carpet
34 installation contractors, and retailers to promote their participation
35 in achieving the purposes of the carpet stewardship plan as
36 described in paragraph (1). These education and outreach
37 materials may include, but are not limited to, any of the following:

38 (A) Signage that is prominently displayed and easily visible to
39 the consumer.

1 (B) Written materials and templates of materials for
2 reproduction by retailers to be provided to carpet installation
3 contractors and consumers at the time of purchase or delivery or
4 both.

5 (C) Promotional materials or activities, or both, that explain
6 the purpose of carpet stewardship and the means by which it is
7 being carried out.

8 (b) The plan prepared pursuant to this section shall be designed
9 to accept and manage all suitable postconsumer carpet, regardless
10 of polymer type or primary materials of construction.

11 (c) (1) The funding mechanism required pursuant to paragraph
12 (4) of subdivision (a) shall provide for a carpet stewardship
13 assessment per unit of carpet sold by a manufacturer in the state,
14 as determined in the plan, to be paid by each member of the carpet
15 stewardship organization on and after January 1, 2013, in an
16 amount that cumulatively will adequately fund the plan. The
17 assessment shall be remitted to the carpet stewardship organization
18 on a quarterly basis and the carpet stewardship organization may
19 expend the assessment only to carry out the plan.

20 (2) The amount of the assessment and the anticipated revenues
21 from the assessment shall be specified in the plan and shall be
22 approved by the department as part of the plan. The assessment
23 shall be sufficient to meet, but not exceed, the anticipated cost of
24 carrying out the plan. The assessment shall not be used
25 competitively by the carpet stewardship organization or an
26 individual manufacturer.

27 (3) The assessment established pursuant to this subdivision and
28 Section 42972.5 is exempt from the taxes imposed by Part 1
29 (commencing with Section 6001) of Division 2 of the Revenue and
30 Taxation Code and shall meet both of the following requirements:

31 (A) The assessment shall be added by a manufacturer to the
32 purchase price of all carpet covered by the plan that is sold to a
33 retailer or a wholesaler or otherwise sold for use in the state.

34 (B) The assessment shall be clearly visible on all invoices and
35 contracts as a separate line item and shall be accompanied by a
36 label approved by the department.

37 (d) A carpet stewardship organization that submits a plan
38 pursuant to this section shall consult with retailers and wholesalers
39 in the development of the plan, in order to minimize the impacts
40 of the plan on retailers and wholesalers.

1 42972.5. (a) Notwithstanding Section 42972, on and after
2 April 1, 2011, but not on or after January 1, 2013, a manufacturer
3 of carpet shall add a carpet stewardship assessment of five cents
4 (\$0.05) per square yard to the purchase price of all carpet sold in
5 the state by that manufacturer. The assessment added pursuant to
6 this subdivision shall be remitted on a quarterly basis, as
7 appropriate, to CARE or be retained by the individual
8 manufacturer referred to in subparagraph (B) of paragraph (1)
9 of subdivision (d) of Section 42971, for expenditure pursuant to
10 subdivision (b).

11 (b) Revenues derived from the assessment imposed pursuant to
12 subdivision (a) shall only be expended by CARE or by an individual
13 manufacturer, prior to approval of its carpet stewardship plan, to
14 implement early action measures that are consistent with the
15 purposes of this chapter and that are designed to achieve
16 measurable improvements in the landfill diversion and recycling
17 of postconsumer carpet.

18 42973. (a) (1) Within 60 days after the department receives
19 a plan submitted pursuant to Section 42972, it shall review the
20 plan, determine whether it complies with Section 42972, and notify
21 the submitter of its decision to approve or not approve the plan.

22 (2) On or after January 1, 2013, an organization appointed by
23 one or more manufacturers to act as an agent on behalf of the
24 manufacturer to design, submit, and administer a carpet
25 stewardship plan pursuant to this chapter may submit a plan to
26 the department pursuant to Section 42972 and that plan may be
27 approved by the department, subject to the requirements of
28 paragraph (1), only if the department makes both of the following
29 findings:

30 (A) The plan will not have the effect of reducing the level of
31 diversion and recycling of postconsumer carpet that has been
32 achieved pursuant to this chapter at the time the department
33 reviews the plan.

34 (B) The funding mechanism in the plan will not create an unfair
35 advantage in the marketplace for one or more of the companies
36 in the organization.

37 (b) If the department does not approve the plan, it shall describe
38 the reasons for its disapproval in the notice. The submitter may
39 revise and resubmit the plan within 60 days after receiving notice
40 of disapproval and the department shall review and approve or

1 *not approve the revised plan within 60 days after receipt. Any plan*
2 *not approved by March 31, 2012, shall be out of compliance with*
3 *this chapter and the submitter of the plan is subject to the penalties*
4 *specified in Section 42978 until the plan is approved by the*
5 *department.*

6 *42974. (a) (1) The department shall enforce this chapter.*

7 *(2) In enforcing this chapter, the department shall, as part of*
8 *this enforcement authority, review the annual report prepared*
9 *pursuant to Section 42976 and within 90 days of receipt, determine*
10 *whether the submitter of the plan is in compliance with this chapter.*

11 *(b) On and after April 1, 2012, a manufacturer, wholesaler, or*
12 *retailer that offers a carpet for sale in this state, or who offers a*
13 *carpet for promotional purposes in this state, is not in compliance*
14 *with this chapter and is subject to penalties pursuant to Section*
15 *42978, if the carpet is not subject to a plan that is submitted by an*
16 *organization that includes the manufacturer of that carpet, which*
17 *plan has been approved by the department pursuant to Section*
18 *42973.*

19 *42975. (a) In order to achieve compliance with this chapter,*
20 *a carpet stewardship organization shall, on or before July 1, 2013,*
21 *and annually thereafter, demonstrate to the department that it has*
22 *achieved continuous meaningful improvement in the rate of*
23 *recycling of postconsumer carpet subject to its stewardship plan.*
24 *In determining compliance, the department shall consider all of*
25 *the following:*

26 *(1) The baseline rate of compliance against which the*
27 *demonstrated improvement is compared.*

28 *(2) The goals included in the organization's plan pursuant to*
29 *paragraph (2) of subdivision (a) of Section 42972.*

30 *(3) The goals included in a national memorandum of*
31 *understanding for carpet stewardship.*

32 *(4) Information provided in the organization's report to the*
33 *department pursuant to Section 42976.*

34 *(b) The percentage of carpet that has been recycled shall be*
35 *calculated by a method adopted by the department after consulting*
36 *with carpet stewardship organizations and taking into account the*
37 *information provided to the department in its annual report*
38 *pursuant to Section 42976.*

39 *(c) If more than one organization submits a carpet stewardship*
40 *plan pursuant to this chapter, the department shall use information*

1 submitted by the organization in its annual report pursuant to
2 Section 42976 to determine the recycling rate attributable to each
3 organization and shall determine compliance with this chapter in
4 accordance with that plan's recycling rate.

5 42976. On or before July 1, 2013, and each year thereafter, a
6 manufacturer of carpet sold in the state shall, individually or
7 through a carpet stewardship organization, submit to the
8 department a report describing its activities to achieve the purposes
9 of this chapter, as described in Section 42970, and to comply with
10 Section 42975. At a minimum, the report shall include all of the
11 following:

12 (a) The total volume of carpet sold by square yards and weight,
13 in the state during the reporting period.

14 (b) The total volume of postconsumer carpet recycled, by weight,
15 in the state during the reporting period.

16 (c) The total volume of postconsumer carpet recovered but not
17 recycled, by weight, and its ultimate disposition.

18 (d) The total cost of implementing the carpet stewardship
19 program and other elements of the carpet stewardship plan.

20 (e) An evaluation of the effectiveness of the program, its funding
21 mechanism, and other elements of the plan, and anticipated steps,
22 if needed, to improve performance.

23 (f) Examples of educational materials that were provided to
24 consumers during the reporting period.

25 42977. (a) The carpet stewardship organization submitting a
26 carpet stewardship plan shall pay the department an annual
27 administrative fee. The department shall set the fee at an amount
28 that, when paid by every carpet stewardship organization that
29 submits a carpet stewardship plan, is adequate to cover the
30 department's full costs of administering and enforcing this chapter,
31 including any program development costs or regulatory costs
32 incurred by the department prior to carpet stewardship plans being
33 submitted. The department may establish a variable fee based on
34 relevant factors, including, but not limited to, the portion of carpets
35 sold in the state by members of the organization compared to the
36 total amount of carpet sold in the state by all organizations
37 submitting a carpet stewardship plan.

38 (b) The total amount of annual fees collected pursuant to this
39 section shall not exceed the amount necessary to recover costs
40 incurred by the department in connection with the administration

1 and enforcement of the requirements of this chapter. The
2 department may expend those annual fees, upon appropriation by
3 the Legislature, to recover those costs.

4 42978. (a) A civil penalty up to the following amounts may be
5 administratively imposed by the department on any person who is
6 in violation of any provision of this chapter:

7 (1) One thousand dollars (\$1,000) per day.

8 (2) Ten thousand dollars (\$10,000) per day if the violation is
9 intentional, knowing, or negligent.

10 (b) Any penalties collected by the department may be expended
11 by the department, upon appropriation by the Legislature, to offset
12 the cost of administering and enforcing this chapter.

13 42979. (a) This chapter does not limit, supersede, duplicate,
14 or otherwise conflict with the authority of the Department of Toxic
15 Substances Control under Section 25257.1 of the Health and Safety
16 Code to fully implement Article 14 (commencing with Section
17 25251) of Chapter 6.5 of Division 20 of the Health and Safety
18 Code, including the authority of the department to include a carpet
19 in a product registry adopted pursuant to that article.

20 (b) Notwithstanding subdivision (a), the Department of Toxic
21 Substances Control shall fully consider the measures taken by the
22 carpet industry pursuant to this chapter, and the results of those
23 measures, when considering whether to include carpet in a product
24 registry adopted pursuant to, or to otherwise regulate carpet
25 pursuant to, Article 14 (commencing with Section 25251) of
26 Chapter 6.5 of Division 20 of the Health and Safety Code.

27 42980. (a) On or before January 1, 2014, the department and
28 the Department of General Services shall complete a study that
29 examines the standard for carpet purchases by the state, as
30 provided in the American National Standards Institute (NSF/ANSI)
31 140-2007 Standard, Platinum Level, as in effect on January 1,
32 2011, and shall submit the study to the Governor and the
33 Legislature pursuant to Section 9795 of the Government Code,
34 including recommendation for any appropriate changes to that
35 standard. In examining the standard and recommending changes
36 to the standard, the department and the Department of General
37 Services shall consider all of the following:

38 (1) Any changes to the standard that would further the purpose
39 of this chapter.

1 (2) *Any changes to the standard that would improve the*
2 *environmental sustainability of carpet purchased by the state.*

3 (3) *The life-cycle impacts of proposed changes to the standard.*

4 (4) *The impacts of the proposed changes to the standard on*
5 *source reduction.*

6 (5) *The impacts of the proposed changes to the standard on the*
7 *recyclability of carpet.*

8 (6) *Economic and technological barriers to the proposed*
9 *changes to the standard.*

10 (b) *The department and Department of General Services shall*
11 *hold at least one workshop to receive comments from interested*
12 *stakeholders prior to the completion of the study.*

13 (c) *Pursuant to Section 10231.5 of the Government Code, this*
14 *section is repealed on January 1, 2018.*

15
16
17 **All matter omitted in this version of the bill**
18 **appears in the bill as amended in the**
19 **Senate, June 23, 2010. (JR11)**
20